

# KOBRE & KIM

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May 14, 2020

## **BY ECF**

Hon. Paul A. Engelmayer  
United States District Court Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

***Re: The Federal Republic of Nigeria, et al v. VR Advisory Services, Ltd., et al.,  
Case No. 1:20-MC-00209-PAE (S.D.N.Y.)***

Dear Judge Engelmayer:

We write as counsel to Process and Industrial Developments Limited (“P&ID”). P&ID is a purported target of the Nigerian criminal investigation in support of which the Applicants in this action—the Federal Republic of Nigeria and Nigerian Attorney General Abubakar Malami (together “Nigeria”)—seek discovery under 28 U.S.C. § 1782 (“Section 1782”). Although Nigeria’s application seeks relief on an “*ex parte*” basis, Dkt. No. 1, P&ID has become aware of the application and is planning on filing a response. In addition, P&ID understands that one or more of the proposed subpoena recipients are in the process of engaging counsel in connection with the application and may wish to file a response as well. We therefore respectfully request that the Court reserve decision on the application, require service on all interested parties, and set a briefing schedule.

As the Court may be aware, this is the second application seeking discovery under Section 1782 that Nigeria has filed in two months. *See In re Ex Parte Application of the Federal Republic of Nigeria and Abubakar Malami, the Attorney General of the Federal Republic of Nigeria*, 1:20-MC-00169-LGS (S.D.N.Y.). In the prior application, Nigeria sought to proceed on an *ex parte* basis, but Judge Schofield *sua sponte* ordered Nigeria to serve all interested parties and set a briefing schedule for any interested party to file a response. 1:20-MC-00169-LGS (Dkt. No. 7). Notwithstanding that order, Nigeria did not serve P&ID. P&ID nonetheless became aware of that application and filed a response and was recognized by the Court as an interested party. 1:20-MC-00169-LGS (Dkt. No. 18 at 3) (“P&ID has an undisputed interest in the subpoenaed information as Applicant states that its investigations and criminal proceedings relate to P&ID, and the requested material relates to P&ID as well.”). Nigeria, through its same counsel as the previous application, has now filed another Section 1782 application, yet apparently does not intend to serve P&ID or the proposed subpoena recipients as Judge Schofield had ordered in the case before Her Honor. We respectfully request that, as Judge Schofield did in the related proceeding, Your Honor

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provide all interested parties, including P&ID and the proposed subpoena recipients, an opportunity to file a response to the application if they wish to do so.

In addition, we respectfully suggest that the Court consider requiring Nigeria to give notice to the U.S. Department of Justice (“DOJ”) as a potentially interested party. Nigeria appears to be repeatedly using Section 1782 as a private party in support of its criminal investigation, notwithstanding that Nigeria has a mutual legal assistance treaty with the United States addressing discovery in support of criminal investigations. *See* US-Nigeria Mutual Legal Assistance Treaty, Sept. 13, 1989, T.I.A.S. No. 03-114.1. It may be of interest to the DOJ that Nigeria is appearing directly in U.S. courts and relying on Section 1782 to gather information within the United States in support of its criminal investigation, apparently sidestepping the U.S.-Nigeria MLAT. Having all interested parties submit their positions to the Court on a coordinated schedule would be most efficient for all involved.

We therefore respectfully propose the following schedule: (i) Nigeria should serve the DOJ and all interested parties by a date set by the Court; (ii) all interested parties (including the DOJ) should be given a common deadline to respond to Nigeria’s application; and (iii) Nigeria should be given an opportunity to file a reply brief.

Respectfully submitted,

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cc: Counsel for the Federal Republic of Nigeria and Abubakar Malami (via ECF)